IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17350 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOTU ALIAS VIRENDRA HIRALAL WADEKAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 17350 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 7.11.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that one case under the Bombay Prohibition Act was registered against the petitioner with Vapi Prohibition station being C.R. No.750/2003 on 17.9.2003. It was also alleged against the petitioner that two witnesses have rendered statements against the petitioner. On the strength of the aforesaid registered offence and unregistered cases, the petitioner was found to be a bootlegger and with a view to prevent him from carrying on his bootlegging activities, the petitioner was ordered to be detained. The petitioner has challenged the said order of detention on various grounds. It has been contended that there was no material before the detaining authority for detaining the petitioner. That therefore, the order of detention is illegal.

2. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents.

3. At the final hearing, learned Advocate for the petitioner has made a statement that the co-detenu of the petitioner was also co-accused in the aforesaid registered offence and the witnesses who have rendered statements against the petitioner. They also rendered statements against the said detenu and the statements are common and the witnesses are also common. That therefore, the case of the petitioner is on par with the case of the said co-detenu.

4. Learned Advocate for the petitioner has also contended that the said detenu had filed Special Civil Application No.2884/2004 before this court which came to be allowed by this Court by judgment dated 17.4.2004. She also states that when the co-detenu has been released and when his detention order has been quashed, then on the principle of parity, the present petition may also be allowed and the present detention order may also be quashed and set aside. On hearing, it is found that the case of the petitioner is on par with the case of the co-accused. Therefore, on the principle of parity, the detention of the present petitioner is also required to be quashed and set aside and the petitioner is required

to be released from detention.

5. For the foregoing reasons, this petition is allowed. The impugned order dated 7.11.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp